

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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CODY FLACK and  
SARA ANN MAKENZIE,

Plaintiffs,

v.

Case No. 18-CV-0309

WISCONSIN DEPARTMENT OF  
HEALTH SERVICES and  
LINDA SEEMEYER, in her official  
capacity as Secretary of the Wisconsin  
Department of Health Services,

Defendants.

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**DEFENDANTS' REPORT REGARDING  
TIME TO DETERMINE PLAINTIFFS' PRIOR AUTHORIZATION  
REQUESTS FOR SERVICES COVERED BY THE CHALLENGED  
EXCLUSION**

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Pursuant to this Court's requirement at the preliminary injunction hearing held on July 19, 2018, Defendants Wisconsin Department of Health Services and Linda Seemeyer (DHS) submit this report on the amount of time DHS's Division of Medicaid Services will need to render an individualized decision on Plaintiff Cody Flack's previously-filed prior authorization request and any prior authorization request by Plaintiff Sara Makenzie (which has not yet been filed) for services covered by the exclusion challenged in this case—Wis. Admin. Code § DHS 107.03(23)–(24)—in the event this Court grants them

a preliminary injunction enjoining DHS from enforcing the challenged exclusion.

**I. Plaintiffs' Medicaid prior authorization requests for services covered by the challenged exclusion.**

Plaintiff Cody Flack, through his provider Dr. Clifford King, had previously submitted to DHS a Medicaid prior authorization request for mastectomy and breast reconstruction. The claim was denied on August 2, 2017, based exclusively on the challenged exclusion. (Dkt. 51:5–7.)

At the preliminary injunction hearing, DHS's counsel raised the likelihood that DHS would consider Flack's prior authorization request to be stale, given the significant amount of time that has passed since his original submission. Plaintiffs' counsel suggested that current medical documentation filed by Flack in this lawsuit could be used to supplement the documentation of the earlier prior authorization request. The Court agreed and requested DHS to provide a time frame by which it could issue a decision on Flack's updated prior authorization request.

Plaintiff Sara Makenzie, unlike Flack, has not submitted to DHS a Medicaid prior authorization request for services covered by the challenged exclusion. However, she has consulted with providers regarding her desire to obtain genital reconstruction surgery. (Dkt. 51:8.) At the preliminary

injunction hearing, her counsel confirmed that she intends to file a prior authorization request soon.

**II. DHS's time frame for rendering an individualized decision on Plaintiffs' claims.**

DHS believes that if either Plaintiff is a Medicaid beneficiary participating in the fee-for-service program, DHS would need ten (10) business days after receipt of the most recent medical information to reach a decision on Plaintiffs' coverage requests. If either Plaintiff is a participant in Medicaid's managed care (HMO) program, then the time frame would be ten (10) business days from the receipt of any appeal of a denial of coverage by the third-party HMO. DHS believes these time frames to be reasonable, given that fee-for-service prior authorization claims are reviewed in 20 business days from receipt in the normal course of business.

Because DHS is unclear as to which specific court filings Plaintiffs' counsel intends to use to supplement Flack's previously-filed prior authorization request, and also to ensure that there is a proper record created within DHS's Division of Medicaid Services, DHS respectfully asks that Flack submit directly to DHS's Division of Medicaid Services the specific medical documents that he believes will properly supplement his previously-filed prior authorization request.

Dated this 20th day of July, 2018.

Respectfully submitted,

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Electronically signed by:

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